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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,534	05/12/2004	Bradley P. Jones	FIS920040035US1	3533
29371	7590	02/14/2006	EXAMINER	
CANTOR COLBURN LLP - IBM FISHKILL 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			COLEMAN, WILLIAM D	
			ART UNIT	PAPER NUMBER
			2823	
DATE MAILED: 02/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/709,534

Applicant(s)

JONES ET AL.

Examiner

W. David Coleman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 6 and 12 is/are rejected.
- 7) ☒ Claim(s) 7-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed December 8, 2005 have been fully considered but they are not persuasive.
2. Applicants contend that Wieczorek et al., U.S. Patent 6,207,563 B1 herein known as Wieczorek fails to teach “a counter tensile layer over a second layer, wherein said counter tensile layer is selected from a material such that an opposing directional stress is created between said counter tensile layer and said second layer, with respect to a directional stress created between said first layer and said second layer”.
3. In response to Applicants contention that Wieczorek fails to disclose “a counter tensile layer over a second layer, wherein said counter tensile layer is selected from a material such that an opposing directional stress is created between said counter tensile layer and said second layer, with respect to a directional stress created between said first layer and said second layer”. Please note the following comments. First and foremost “the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art’s functioning, does not render the old composition patentably new to the discoverer.” *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). In this case Applicant’s claims addressing the stress between materials is an inherent property. The term “counter tensile” is equivalent to the term “compressive” which is a term ordinarily used in the art. The Examiner provides a supplemental reference of

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Yamada et al., U.S. Patent 6,344,411 B1 which discloses that annealing has a direct relationship to compressive stress and tensile stress in which the property of compressive stress is converted to tensile stress. Applicant's term of "counter tensile", is merely nothing more than compressive stress. Yamada teaches that titanium nitride has a large compressive stress (which is equivalent to Applicants "counter tensile" term, see column columns 3 and 4 wherein after annealing changes the compressive stress into a tensile stress, column 4, lines 4-15). Because Wieczorek teaches annealing layer 70 which is titanium nitride with layer 66 which can be titanium nitride (see column 6, lines 41-48), the stress between the two materials are changed.

4. Applicants contend that Wieczorek reveals that there is no additional layer whatsoever that is formed over the cap layer 70 in Figures 6 and 7.

5. In response to Applicants contention that Wieczorek does not teach an additional layer over the cap layer, Applicants are miss-directing the prior art rejection. Wieczorek clearly discloses a refractory metal to form cobalt silicide layer 64, than forming metal layer 66 over layer 64 and then forming layer 70 over layer 66. Because Applicants claim a cap layer over the refractory metal, Applicants are inter-mixing the true meaning of the term "cap layer" and the actual location of the film layer.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 6 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wieczorek et al., U.S. Patent 6,207,563 B1.

Allowable Subject Matter

8. Claims 1-4 allowed.

9. The following is an examiner's statement of reasons for allowance: the prior art does not teach the compressive stress or Applicants term "counter tensile" layer over the titanium nitride layer being the same material as the first layer below the titanium nitride layer.

10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Objections

11. Claims 7-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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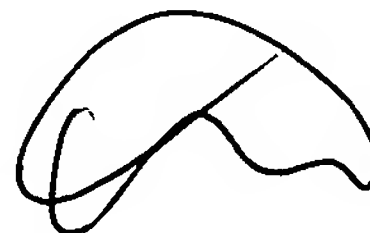
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to W. David Coleman whose telephone number is 571-272-1856.

The examiner can normally be reached on Monday-Friday 9:00 AM - 5:30 PM.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Smith can be reached on 571-272-1907. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



W. David Coleman
Primary Examiner
Art Unit 2823

WDC